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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/654,253	09/01/2000	Cynthia L. Recker	SC11244ZC	5727

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LAW OFFICE OF CHARLES W. BETHARDS, LLP
P.O. BOX 1622
COLLEYVILLE, TX 76034

EXAMINER

DAY, HERNG DER

ART UNIT PAPER NUMBER

2128

DATE MAILED: 06/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/654,253

Applicant(s)

RECKER ET AL.

Examiner

Herng-der Day

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 1/18/05 and 4/4/05.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. This communication is in response to Applicants' Amendment ("Amendment") to Office Action dated November 17, 2004, faxed January 18, 2005, and Applicants' Amendment with RCE ("RCE") to Office Actions dated March 1, 2005, mailed April 1, 2005, and received by PTO April 4, 2005.

1-1. Claims 4 and 12 have been amended. Claims 1-20 are pending.

1-2. Claims 1-20 have been examined and rejected.

Oath/Declaration

2. Applicants' DECLARATION UNDER 37 C.F.R. § 1.131 dated April 1, 2005, has been reviewed. The arguments are not persuasive for the following reason:

Although Applicants have provided evidence of *conception of the invention*, i.e., "Appendix I-III", they have merely *alleged* due diligence in the declaration 5 at page 3 without providing any factual evidence of due diligence. In other words, Applicants have not provided any *factual evidence of due diligence* as per MPEP Appendix R, PATENT RULES, § 1.131, which states:

§ 1.131 Affidavit or declaration of prior invention.

(b) The showing of facts shall be such, in character and weight, as to establish reduction to practice prior to the effective date of the reference, or conception of the invention prior to the effective date of the reference coupled with due diligence from prior to said date to a subsequent reduction to practice or to the filing of the application. Original exhibits of drawings or records, or photocopies thereof, must accompany and form part of the affidavit or declaration or their absence satisfactorily explained.

Accordingly, Applicants' arguments presented in the DECLARATION UNDER 37 C.F.R. § 1.131 are not persuasive. Therefore, the prior art rejections of claims 1-20 based on U.S. Patent 6,560,755 B1 issued to Zhang et al. on May 6, 2003 are maintained, in the absence of any arguments pertaining to the merits of the 103(a) rejections.

3. As indicated at page 2 of Appendix I of Applicants' DECLARATION UNDER 37 C.F.R. § 1.131 dated April 1, 2005, the answer to the question "Has a product incorporating your idea been sold, offered for sale, placed in production, qualification, sampled, described in any publication (including Motorola promotional literature), marketed, shipped to anyone outside of Motorola (customer or distributor), or placed into inventory?" is "YES". The Examiner requests detailed information of the question-mentioned product including the related date because it appears to be reasonably necessary to the examination of this application.

4. As described at page 4 of Appendix II of Applicants' DECLARATION UNDER 37 C.F.R. § 1.131 dated April 1, 2005, the proposed solution includes "Automate the Motorola Mismatch Model in the form of a web-based tool". Also, at page 2, "Motorola has developed a new mismatch model". The Examiner requests detailed information of the Motorola Mismatch Model including the related date because it appears to be reasonably necessary to the examination of this application and cannot be found.

Specification

5. The objections to the specification have been withdrawn.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-6 and 8-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zhang et al., U.S. Patent 6,560,755 B1 issued May 6, 2003, and filed August 24, 2000, in view of Applicants' admission.

7-1. Regarding claims 1-6 and 8-20, Zhang et al. disclose a mismatch modeling tool comprising:

a software implemented transistor mismatch model ("SITMM") (mismatch extraction module 204, column 6, lines 54-63, and FIG. 2);

at least one editable mismatch model data library comprising process parameter variables accessed by said SITMM (mismatch model parameters, column 6, lines 37-42);

a circuit simulation library and program data output accessed by said SITMM (original model, column 6, lines 54-63, and FIG. 2); and

a graphical interface to said SITMM (input interface 202, column 6, lines 54-63, and FIG. 2).

Zhang et al. fail to expressly disclose the format used in the input interface for different scenarios. Nevertheless, Zhang et al. have disclosed different interface for input data and output results.

Applicants have admitted at page 5, lines 8-10, "The mismatch tool 10 further comprises the data input and data output interfaces that may be comprised of any data interface method or system". Also, at pages 8-9, Applicants have admitted programming changes for added new technologies, for example, make the technology available on the pull down menus, may be accomplished in a variety of methods by those skilled in the art. Furthermore, at page 7, lines 7-9, Applicants have admitted, "The five scenarios above are presented as examples of scenarios popular with those skilled in the art".

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Zhang et al. to incorporate the admission of Applicants to obtain the invention as specified in claims 1-6 and 8-20 because using graphical interface to facilitate data input and output for different applications or scenarios is considered to be well known for those skilled in the relevant art.

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of Zhang et al., U.S. Patent 6,560,755 B1 issued May 6, 2003, and filed August 24, 2000, and Applicants' admission in view of Hussey, U.S. Patent 5,826,269 issued October 20, 1998.

8-1. Regarding claims 7, Zhang et al. fail to expressly disclose the output data file is an emailed ASCII output data file.

Hussey discloses an electronic mail interface that provides an efficient networked system that processes user requests submitted to a network server, the results of which are typically viewed at a later time in order to facilitate task scheduling by the server of user requests from

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connected client computers in a network, and thereby reduce the incidence of system bottlenecks that may rise with a server (column 3, lines 29 through column 4, line 16).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combined teachings of Zhang et al. and Applicants' admission to incorporate the teachings of Hussey to obtain the invention as specified in claim 7 because it will facilitate task scheduling and thereby reduce the incidence of system bottlenecks.

Applicants' Arguments

9. Applicants argue the following:

(1) "In view of the amendments to the specification as well as claim 4 and 12. Applicant respectfully submits that the rejection of claims 1-20 under 35 U.S.C. 112, first paragraph have been traversed" (page 10, paragraph 3, through page 11, paragraph 1, Amendment).

(2) "Zhang et al is not a proper reference to support a rejection of claims 1-6 and 8-20 under 35 U.S.C. 103(a) since Zhang et al was filed after the invention by the Applicants" (page 11, paragraph 2, Amendment).

(3) "Zhang et al, given this references effective date is not a proper reference to support this §103(a) rejection of claim 7" (page 11, paragraph 3, Amendment).

(4) "In view of the enclosed April 1, 2005 Rule 1.131 Declaration duly signed by the Applicants, the present invention was conceived before August 24, 2000 and due diligence was exercised from a date prior to August 24, 2000, the effective date of Zhang et al., to September 1, 2000, the filing date of the present Application" (page 11, paragraph 3, RCE).

Response to Arguments

10. Applicants' arguments have been fully considered.

10-1. Applicants' argument (1) is persuasive. The rejections of claims 1-20 under 35 U.S.C. 112, in Office Action dated November 17, 2004, have been withdrawn.

10-2. Response to Applicants' arguments (2)-(4). Applicants' arguments presented in the DECLARATION UNDER 37 C.F.R. § 1.131 are not persuasive. Therefore, the prior art rejections of claims 1-20 based on U.S. Patent 6,560,755 B1 issued to Zhang et al. on May 6, 2003 are maintained, in the absence of any arguments pertaining to the merits of the 103(a) rejections as detailed in section 2 above.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Herng-der Day whose telephone number is (571) 272-3777. The Examiner can normally be reached on 9:00 - 17:30.

Any inquiry of a general nature or relating to the status of this application should be directed to the TC 2100 Group receptionist: (571) 272-2100.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Jean R. Homere can be reached on (571) 272-3780. The fax phone numbers for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Herng-der Day
June 23, 2005

H.D.

Thai Phan
Thai Phan
Primary Examiner
AU: 2128
6/24/05